

Roger A Wright, SBA #014150  
**WRIGHT LAW FIRM, PLC**  
3532 E Cotton Court  
Gilbert, Arizona 85234  
(480) 558-1700  
[office@wrightlawaz.com](mailto:office@wrightlawaz.com)  
*Attorney for Defendant*  
*Barrett Financial Group, LLC*

**THE UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

Bonnie Creech,  
Plaintiff,

VS.

Barrett Financial Group, L.L.C.; Broker Solutions, Inc., dba Kind Lending, Kind Lending, L.L.C.; John Claude Hegglin, an individual, and as an agent of Barrett Financial Group, L.L.C., Broker Solutions, Inc., dba Kind Lending; and Kind Lending L.L.C.; and Jane and John Doe employees 1-10.

## Defendants

Case No.: CV-22-00871-PHX-SMB

**DEFENDANT BARRETT FINANCIAL  
GROUP'S MOTION FOR LEAVE TO  
WITHDRAW ITS 12(B)(6) MOTION TO  
DISMISS AND FOR LEAVE TO REFILE  
OR, ALTERNATIVELY, MOTION TO  
AMEND 12(B)(6) MOTION**

Financial Group respectfully requests that the Court grant Defendant leave to withdraw its 12(b)(6) Motion to Dismiss (DE 15) without prejudice to re-filing it if the parties are unable to agree that defects in Plaintiff's Complaint are curable by a permissible amendment. Alternatively, Defendant moves to amend its 12(b)(6) motion by filing the certification required by LRCiv. 12.1(c).

## **DISCUSSION**

On August 25, 2022, the parties stipulated to extend the deadline to file a responsive pleading. This was done to allow the parties to engage in good faith settlement negotiations. Those efforts failed. Consequently, on the agreed upon deadline of September 2, 2022, Barrett Financial Group

1 filed its 12(b)(6) Motion to Dismiss. While Defendant's motion was timely filed it was also filed  
 2 before the parties had conferred as required by LRCiv. 12.1(c). On September 5, Defendant emailed  
 3 Plaintiff's counsel to notify her regarding the lack of certification and to engage in the meet and  
 4 confer required under the rule:

5 (c) Motions to Dismiss for Failure to State a Claim or for Judgment on the  
 6 Pleadings. No motion to dismiss for failure to state a claim or counterclaim,  
 7 pursuant to Federal Rule of Civil Procedure 12(b)(6), or motion for judgment on  
 8 the pleadings on a claim or counterclaim, pursuant to Federal Rule of Civil  
 9 Procedure 12(c), will be considered or decided unless the moving party includes a  
 10 certification that, before filing the motion, the movant notified the opposing party  
 11 of the issues asserted in the motion and the parties were unable to agree that the  
 12 pleading was curable in any part by a permissible amendment offered by the  
 13 pleading party. The movant may comply with this rule through personal,  
 14 telephonic, or written notice of the issues that it intends to assert in a motion. A  
 15 motion that does not contain the required certification may be stricken summarily.

16 In response Plaintiff requested that Defendant withdraw its motion "until [the parties] confer and  
 17 [Plaintiff's Counsel] has had time to review the filing."

18 Plaintiff's request is proper. However, a unilateral withdrawal of the 12(b)(6) motion creates  
 19 the potential of default under Rule 55. Defendant files this motion out of an abundance of caution.  
 20 Defendant respectfully requests leave to withdraw its 12(b)(6) motion and that it be allowed to re-file  
 21 its motion if the parties cannot agree that defects in Plaintiff's Complaint may be cured by  
 22 amendment.

23 As an alternative, Defendant moves to amend its 12(b)(6) motion by filing the required  
 24 LRCiv. 12.1(c) certification, and that Plaintiff's Response be due commencing from the date  
 25 Defendant files its LRCiv. 12.1(c) certification. A motion to dismiss is not a pleading within the  
 meaning of Rule 15(a). See Fed.R.Civ.P. 7(a); *Jacobs v. Tempur-Pedic Int'l, Inc.*, 626 F.3d 1327,  
 1344 (11th Cir. 2010). And Defendant has found no procedural rule addressing amendments of  
 motions to dismiss, and none specifically addressing certifications under LRCiv. 12.1(c). The Federal  
 Rules of Civil Procedure, however, are to "be construed and administered to secure the just, speedy,  
 and inexpensive determination of every action and proceeding." Fed.R.Civ.P. 1. A district court

1 possesses inherent authority to control its proceedings under 28 U.S.C. § 1651; *see also Martin v.*  
2 *Automobili Lamborghini Exclusive, Inc.*, 307 F.3d 1332, 1335 (11th Cir. 2002).

3 **CONCLUSION**

4 For the above reasons, Defendant respectfully moves the Court for an order permitting the  
5 withdrawal of its 12(b)(6) motion to allow Defendant to address the issues raised therein and to  
6 determine whether the defects alleged in Plaintiff's Complaint can be cured by permissible  
7 amendment. Alternatively, Defendant moves for an order permitting it to file its certification under  
8 LRCiv. 12.1(c).

9 RESPECTFULLY SUBMITTED this 9<sup>th</sup> day of September 2022.

10 **WRIGHT LAW FIRM, PLC**

11 *By: /s/ Roger A. Wright* \_\_\_\_\_

12 Roger A. Wright (AZ # 014105)

13 3532 E Cotton Court

14 Gilbert, Arizona 85234

15 Telephone: (480) 558-1700

16 [office@wrightlawaz.com](mailto:office@wrightlawaz.com)

17 *Counsel for Barrett Financial Group, LLC*

## **CERTIFICATE OF SERVICE**

I certify that, on September 9th, 2022, I filed the foregoing Barrett Financial Group's Motion to Dismiss via the Court's electronic filing system.

**DEFENDANT BARRETT FINANCIAL GROUP'S MOTION FOR LEAVE TO  
WITHDRAW ITS 12(b)(6) MOTION TO DISMISS AND FOR LEAVE TO REFILE OR,  
ALTERNATIVELY, MOTION TO AMEND 12(b)(6) MOTION**

The Court's electronic filing system will provide notice and a copy of this filing to the following electronic filing registrants:

Christine Anderson Ferraris  
Stephen Weeks  
A. FERRARIS LAW, PLLC  
333 N. Wilmot, Suite 340  
Tucson, Arizona 85711  
[cferraris@aferrarislaw.com](mailto:cferraris@aferrarislaw.com)  
[sweeks@aferrarislaw.com](mailto:sweeks@aferrarislaw.com)  
*Counsel for Plaintiff*

Anelisa Benavides  
David Edward Funkhouser, III  
SPENCER FANE LLP  
2415 E Camelback Rd., Ste. 600  
Phoenix, AZ 85016-4251  
602-333-5464  
*abenavides@spencerfane.com*  
*dfunkhouser@spencerfane.com*  
*Counsel for Defendant*  
*Broker Solutions, Inc. dba*  
*Kind Lending*

Robert Moon  
MOON LAW FIRM, PLC  
1423 S. Higley Road, Suite 112  
Mesa, Arizona 85206  
(480) 590-7359  
*robert@moonlawaz.com*  
*Attorney for Defendant*  
*John Hegglan*

by/ Roger A. Wright  
Counsel for Defendant  
Barrett Financial Group, LLC